



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 29, 2000

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Justin Briggs, Treasurer  
Charles Ball for Congress  
2254 Latour Avenue  
Livermore, CA 94450

RE: MUR 4919

Dear Mr. Briggs:

On August 23, 2000, the Federal Election Commission found that there is reason to believe that Charles Ball for Congress knowingly and willfully violated 2 U.S.C. §§ 441d(a) and 441h, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also found reason to believe that you, as treasurer, violated 2 U.S.C. §§ 441d(a) and 441h. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

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Mr. Justin Briggs, Treasurer

Charles Ball for Congress

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settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Xavier K. McDonnell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold  
Chairman

Enclosures

Order and Subpoena

Factual and Legal Analysis

Procedures

Designation of Counsel Form

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

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MUR 4919

**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Justin Briggs, Treasurer  
Charles Ball for Congress  
2254 Latour Avenue  
Livermore, CA 94450

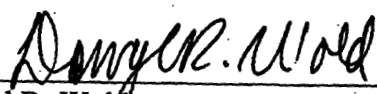
Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

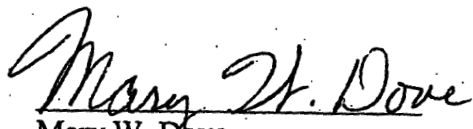
Subpoena to Charles Ball for Congress  
MUR 4919  
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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in  
Washington, D.C. on this *28th*, day of *August*, 2000.

For the Commission,

  
\_\_\_\_\_  
Darryl R. Wolf  
Chairman

ATTEST:

  
\_\_\_\_\_  
Mary W. Dove  
Acting Secretary to the Commission

Attachments  
Document Request & Questions

### **INSTRUCTIONS**

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1998 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named witnesses in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

**QUESTIONS AND DOCUMENT REQUESTS**

1. State whether you were involved in any way (including by requesting, suggesting or discussing) in creating, editing, reviewing, approving, authorizing, financing or disseminating the enclosed document purportedly generated by the "East Bay Democratic Committee." See Attachment A. If the answer to this interrogatory is in the affirmative:

(a) identify all persons (including but not limited to any vendors or consultants) involved and describe their role or involvement, creating, reviewing, editing, approving or financing;

(b) state the number of copies of Attachment A that were created, produced and disseminated and identify, or provide a list of, all persons to whom it was disseminated;

(c) state the amount of funds paid for the production and dissemination of Attachment A;

(d) identify the source of the funds used to finance the creation and dissemination of Attachment A, i.e., the bank or other institution from which such funds originated and the account number and the name(s) of the person(s) who own such account;

(e) identify the source of the names of persons to whom Attachment A was disseminated;

(f). identify and produce all documents related to the creation, production, review, financing or dissemination of Attachment A, including but not limited to flyers, checks, money orders, bank statements, withdrawal slips, deposit slips, invoices, correspondence, memoranda, reports, scripts, drafts of scripts, lists of recipients, voter lists, mailing lists, calendars, diaries.

2. State whether you know or are aware of any person(s) involved in any way in creating, editing, reviewing, approving, financing or disseminating the enclosed document purportedly generated by the "East Bay Democratic Committee." See Attachment A. If the answer to this interrogatory is in the affirmative:

(a) identify such persons;

(b) briefly describe the substance of any communication(s) you had with such person(s);

(c) provide the date(s) of all such communication(s) and;

(d) identify and produce all documents related to such communications.

3. State whether you were involved in any way (including by requesting, suggesting or discussing) in approving, authorizing, financing or making telephone calls by persons claiming to be from the "East Bay Democratic Committee" or which urged callers not to support or vote for Ellen Tauscher for Congress in 1998. If the answer to this interrogatory is in the affirmative:

(a) identify all persons (including but not limited to any vendors or consultants) involved and briefly describe each person's involvement or role, i.e., creating, reviewing, editing, approving scripts, suggesting or approving consultants, financing.

(b) state the number of phone calls made and identify all persons to whom they were made;

(c) state the total amount of funds paid for the phone calls or phone banks (including for the creation and production of the scripts);

(d) identify the source of the list of persons to whom the phone calls were made;

(e) identify the source of the funds used to finance the production and dissemination of Attachment A, i.e., the bank or other institution from which such funds originated and the account number and the name(s) of the person(s) who own such account;

(f) identify and produce all documents related to the creation, production, review, financing or dissemination of the phone calls, including but not limited to checks, money orders, bank statements, withdrawal slips, deposit slips, invoices, correspondence, memoranda, reports, scripts, drafts of scripts, lists of recipients, voter lists, mailing lists, calendars, diaries.

4. State whether you know or are aware of any person(s) involved in approving, financing or making any telephone calls from any person(s) claiming to be from the "East Bay Democratic Committee" or any similarly named group which discussed Ellen Tauscher or urged callers not to vote for her. If the answer to this interrogatory is in the affirmative: (a) identify such persons; (b) briefly describe the substance of any communication(s) with such person(s); (c) provide the date(s) of all such communication(s); and (d) identify and produce all documents related to such communications.

5. Identify all vendors or consultants who had any involvement in any mailings, flyers or posters paid for, authorized or approved by you, and identify and produce all such documents, including but not limited to letters, flyers, posters correspondence, memoranda, proposals, reports, checks, money orders, bank statements, withdrawal slips, deposit slips, invoices, scripts, drafts of scripts, lists of recipients, voter lists, mailing lists, calendars, diaries.

6. Identify all vendors or consultants who had any involvement in any phone calls or phone banks paid for, authorized or approved by you, and identify and produce all documents related to any such phone banks or phone calls, including but not limited to correspondence, memoranda, reports, checks, money orders, bank statements, withdrawal slips, deposit slips, invoices, scripts, drafts of scripts, lists of recipients, voter lists, mailing lists, calendars, diaries.



7. Provide the name, address and account number(s) for all banks and lending institutions used by you to make any payment in connection with Charles Ball's 1998 Congressional campaign.
8. State whether you used currency to pay for any direct mail, correspondence, phone bank or phone calls services. If the answer is in the affirmative:
  - (a) identify the person(s) paid with such funds;
  - (b) state the amount(s) paid and what was purchased;
  - (c) identify the account which was the source of such funds, e.g., the account number, name of institution and name of account holder; and
  - (d) identify and produce all documents related to any such payments or transactions.
9. State your practice with regard to retention and destruction of documents. State whether any documents created or generated by you or your agents during 1998 were destroyed, including but not limited to Attachment A or any documents related to its creation or distribution or any documents related to any phone calls or phone banks authorized, approved or financed by you. If so, describe such documents.

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

Respondents Charles Ball for Congress  
Justin Briggs, as treasurer

MUR 4919

### **I. GENERATION OF MATTER**

This matter was generated by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). It involves a fraudulent mailing and phone banks which were undertaken in California's 10<sup>th</sup> Congressional district in the days just prior to the general election on November 3, 1998. Based upon information at hand at that time, on August 19, 1999, the Commission found reason to believe that persons unknown knowingly and willfully violated 2 U.S.C. § 441d(a), and initiated an investigation. Because the persons/organizations responsible for the communications disguised their identities, the Commission could not inform the respondents of its findings. Information gathered by the Commission through its investigation indicates that Charles Ball for Congress may be responsible.

### **II. APPLICABLE LAW**

The Federal Election Campaign Act of 1971, as amended (the "Act") provides that whenever any person makes an expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate or soliciting contributions, such communication must include a disclaimer clearly stating the name of the person who paid for the communication and indicating whether the communication was authorized by any candidate or candidate's authorized committee. 2 U.S.C. § 441d(a); *see also* 11 C.F.R. § 110.11.

The Act also provides that no person who is a candidate for federal office or employee or agent of such candidate shall fraudulently misrepresent any committee or organization under his control as speaking or writing for or on behalf of any other candidate or political party on a matter which is damaging to such other candidate or political party. 2 U.S.C. § 441h.

The Act provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N.J. 1986). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions and that they "deliberately conveyed information that they knew to be false to the Federal Election Commission." *United States v. Hopkins*, 916 F.2d 207, 214-215 (5<sup>th</sup> Cir. 1990). "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214, *quoting Ingram v. United States*, 360 U.S. 672, 679 (1959).

### **III. FACTS**

This matter involves activities that occurred in connection with the election held in California's 10<sup>th</sup> Congressional district on November 3, 1998. The Democratic candidate was Congresswoman Ellen Tauscher. The Republican candidate was Charles Ball. Mr. Ball's authorized committee is Charles Ball for Congress ("Ball campaign"). The Ball campaign's current treasurer is Justin Briggs. Mr. Briggs was not the treasurer at the time of the activities at issue in this matter.

On or about November 1, 1998, a mailing was sent to an unknown number of registered

Democratic households within the 10<sup>th</sup> Congressional district. The letter is dated November 1, 1998, and the typewritten letterhead states:

**EAST BAY DEMOCRATIC COMMITTEE  
REPRESENTING ALL DEMOCRATS IN THE EAST BAY**

The letter and envelope bear a fraudulent address. The envelope states "URGENT! VOTING INFORMATION ENCLOSED! OPEN IMMEDIATELY!"

The signatory of the letter is "George Miller," which is the name of the Democratic Congressman in the neighboring district. The letter strongly criticizes Democratic candidate Ellen Tauscher for voting for an impeachment inquiry of President Bill Clinton and for voting with Republicans on tax and minimum wage issues. The letter accuses Representative Tauscher of "abandonment of the party." The letter states that "[W]e have been left with no choice but to send Ellen Tauscher a message. Because she abandoned us, we are abandoning her." The letter then urged recipients not to vote for her because "[n]ot voting for her is the best way for her to receive this message." It has been reported that the mailing may have been sent to 122,000 registered Democrats.

An unknown number of registered Democrats received phone calls on the evening of November 2, 1998. The callers urged recipients not to vote for Ellen Tauscher. The callers identified themselves as representatives of the "East Bay Democratic Committee."

Information within the Commission's possession indicates that the mailing was undertaken by Charles Ball for Congress. Specifically, when provided with a copy of the mailing in question, the Ball campaign's vendor, Stevens Printing, indicated that it may have printed this piece for the Ball campaign. It also stated that the mailing would have been ordered by Adrian Plesha or Heather Patterson, both staff of Charles Ball for Congress.

#### IV. ANALYSIS

Ellen Tauscher was clearly identified in the communications as a Congressional candidate. The communications urged recipients not to vote for Ellen Tauscher and were publicly distributed. Accordingly, the communications expressly advocated the defeat of Congresswoman Ellen Tauscher. As the communications did not state whether they were paid for or authorized by any candidate or his or her authorized committee, there appears to be a violation of Section 441d(a).

It appears that the violation by the Ball campaign was knowing and willful. First, the evidence at hand indicates that the Ball campaign was well aware that such communications require a Section 441d(a) disclaimer. Specifically, a disclaimer stating "Paid for by the Charles Ball for Congress Committee" was included on another earlier mailing put out by the Ball campaign seeking votes from absentee voters. Second, those responsible for the mailing attempted to disguise themselves as a Democratic committee in an attempt to convince the targeted Democratic audience that they should not vote for Ellen Tauscher. Including a Section 441d disclaimer stating that Tauscher's opponent paid for the mailing would have undermined the very purpose of these communications. In short, because of the fraudulent nature of the communications, an inference can be made those responsible purposely failed to meet the Section 441d requirements. See *United States v. Hopkins*, 916 F.2d 207, 214-215 (5<sup>th</sup> Cir. 1990)(An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions).

As noted above, on August 19, 1999, the Commission found reason to believe that persons unknown knowingly and willfully violated 2 U.S.C. § 441d(a), and initiated an investigation. It now appears that the Ball campaign was responsible for these communications.

Accordingly, there is reason to believe that Charles Ball for Congress knowingly and willfully violated 2 U.S.C. § 441d(a). There is also reason to believe that Justin Briggs, as treasurer of Charles Ball for Congress, violated 2 U.S.C. § 441d(a).

It also appears that the Ball campaign, acting on behalf of the candidate, fraudulently misrepresented itself as speaking and writing for a political party on a matter which is damaging to such party. Specifically, the creators of this mailing knowingly made a false representation by pretending to be an official Democratic organization called the "East Bay Democratic Committee." To bolster this deception, the creators of the mailing used the name George Miller as the signatory of the letter and stated that the group "Represent[ed] all Democrats within the East Bay." George Miller is the Democratic Congressman in the neighboring district--which is also within the area known as the East Bay.<sup>1</sup> The misrepresentation was material because the mailing was targeted to Democrats and made it appear as if a local Democratic committee and a local Democratic leader were advocating abandonment of the recipients' Democratic representative in Congress. Had the recipients known the true identity of the group that sponsored the mailing, the message would have been considerably weakened.

The mailing was damaging to the Democratic Party and to Representative Tauscher because it conveyed to registered Democrats that a local Democratic committee, acting through a neighboring Democratic Congressman, believed that the nominee had abandoned the party. Moreover, the mailing was damaging because it told recipients, who were registered Democrats, not to vote for the Democratic candidate in an election that was just days away. It is evident that

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<sup>1</sup> Given the context in which the name George Miller was used—specifically a political mailing purportedly created by the "East Bay Democratic Committee"-- it is evident that those responsible for this mailing were attempting to create the impression that it was Congressman George Miller who was speaking through this mailing.

the creator(s) of this mailing intended to damage the Democratic party and its candidate Ellen Tauscher by suppressing votes that candidate might have otherwise received. As it appears that the Ball campaign was responsible, there appears to be a violation of Section 441h.

Additionally, the information at hand indicates that the follow-up phone calls were undertaken by persons purporting to be from the "East Bay Democratic Committee." The callers urged voters not to vote for Ellen Tauscher. The calls contained a similar message and appear to have been connected with the mailing. As the Ball campaign appears to have been responsible for these phone calls, it appears that it violated Section 441h.

The information at hand suggests that the Section 441h violation, like the violation of Section 441d(a), was knowing and willful. Those responsible for the mailing attempted to disguise themselves as a Democratic committee in an attempt to convince the targeted Democratic audience that they should not vote for Ellen Tauscher. Because of the fraudulent nature of the communications, an inference can be made that the violation was knowing and willful. *See United States v. Hopkins*, 916 F.2d 207, 214-215 (5<sup>th</sup> Cir. 1990)(An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions). In light of the above, there is reason to believe that Charles Ball for Congress knowingly and willfully violated 2 U.S.C. § 441h. There is also reason to believe that Justin Briggs, as treasurer of Charles Ball for Congress, violated 2 U.S.C. § 441h